

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ROBERT E. STEPHENS)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 97-145
)	
HIGHLAND COMMUNICATIONS OF)	
TENNESSEE)	
)	
DEFENDANT)	

O R D E R

On March 12, 1997, Robert E. Stephens ("Complainant"), a member of Highland Telephone Cooperative, Inc. ("Highland Telephone"), filed a formal complaint against Highland Communications of Tennessee ("Highland Communications"), a wholly-owned subsidiary of Highland Telephone. A copy of the Complaint is attached hereto. Although the Complaint does not name Highland Telephone as a defendant, it contains Complainant's statement of belief that Highland Telephone has violated its cooperative objectives by establishing Highland Communications, a "for profit" company, with Highland Telephone's surplus monies. Complainant alleges that Highland Telephone's "exorbitant" rates created the surplus.

The Commission, having reviewed the evidence of record and being otherwise sufficiently advised, finds that Highland Telephone should be made a party to this proceeding and it should be required to satisfy the matters complained of or file a written answer to the complaint.

IT IS THEREFORE ORDERED that:

1. Highland Telephone is hereby named as a defendant in this proceeding.
2. Highland Telephone shall, pursuant to 807 KAR 5:001, Section 12, satisfy the matters complained of or file a written answer to the complaint within 10 days from the date of service of this Order.
3. Highland Telephone shall serve on all parties of record a copy of any and all documents that it files with the Commission in the course of this proceeding.

Done at Frankfort, Kentucky, this 11th day of June, 1997.

PUBLIC SERVICE COMMISSION


For the Commission

ATTEST:


Executive Director

91-60577 89

Before the Public Service Commission

RECEIVED
MAR 12 1997
PUBLIC SERVICE
COMMISSION

(Insert name of complainant)
Complainant

) Robert E. Stephens

vs.

) No. 97-145
(To be inserted by
the secretary)

(Insert name of each defendant)
Defendant

) Highland Communications
of Tennessee

COMPLAINT

The complaint of (here insert full name of each complainant) respectfully shows:

(a) That (here state name, occupation and post office address of each complainant).

Robert E. Stephens RR#1, Box 7141, Whitley City, Ky. 42653

(b) That (here insert full name, occupation and post office address of each defendant).

Highland Communications of Tennessee 950 Main St. Wartburg, Tenn. 37887

(c) That (here insert fully and clearly the specific act or thing complained of, such facts as are necessary to give a full understanding of the situation, and the law, order, or rule, and the section or sections thereof, of which a violation is claimed). See attached Enclosure.

WHEREFORE, complainant asks (here state specifically the relief desired).
See attached Enclosure)

Dated at Whitley City, Kentucky, this 12th day
of March, 19 97.

Robert E. Stephens
Robert E. Stephens
(Name of each complainant)

Not applicable
(Name and address of attorney,
if any)

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

<u>Robert E. Stephens</u>)	
(Your Full Name))	
COMPLAINANT)	
)	
VS.)	
)	
)	
<u>Highland Communications of Tennessee</u>)	
(Name of Utility))	
DEFENDANT)	

C O M P L A I N T

The complaint of Robert E. Stephens respectfully shows:
(Your Full Name)

(a) Robert E. Stephens
(Your Full Name)

RR#1, Box 7141, Whitley City, Kentucky 42653
(Your Address)

(b) Highland Communications of Tennessee
(Name of Utility)

950 Main Street, Suite D, Wartburg, Tennessee 37887
(Address of Utility)

(c) That: See attached Enclosure for Formal Complaint.
(Describe here, attaching additional sheets if

including additional pages, for which the
necessary, the specific act, fully and clearly, or facts

complainant does not have sufficient space to
that are the reason and basis for the complaint.)

make comments here.

Formal Complaint

Robert E. Stephens
(Your Name)

vs Highland Communications of Ten-
(Utility Name)
nessee.

Page 2

For continuation of Item (c) continue with the

Enclosure to the Formal Complaint.

Wherefore, complainant asks For the relief sought follow
(Specifically state the

each of the Original page designations where comments
relief desired.)

and/or items that are excessive, inflationary or in

violation are pointed out with recommendations for

such relief.

Dated at Whitley City, Kentucky, this 12th. day
(Your City)

of March, 1997.
(Month)

Robert E. Stephens
Robert E. Stephens
(Your Signature)

Not applicable at this time
(Name and address of attorney, if any)

Enclosure for Formal Complaint
Item C

Complainant alleges that as of 20 February 1997, when the Kentucky Public Services Commission received a letter of intent from Highland Communications to conduct business in Kentucky, that in fact, by correspondence from Baker, Donelson, Bearman & Caldwell of Huntsville, Tennessee, that an Application for Certificate of Authority had been filed with the Secretary of State of the Commonwealth of Kentucky on 7 November 1996, which advised that the name Highland Communications was not available, but that business could be done in the name of: Highland Communications Corporation of Tennessee.

This complainant advises the Executive Director of the Public Service Commission of Kentucky that with this assignment of the new name by resolution of Highland Communications of Tennessee on 10 February 1997, that the people of the Commonwealth of Kentucky were misrepresented and misinformed by the then designated Highland Communications that this company would be doing business in Kentucky as a provider of long distance service and operator assisted calling to presubscribed customers. At that time there were no "presubscribed customers".

Then on 14 February 1997, the proposed Highland Communications Corporation issued an "Intrastate Tariff No.1 that was to be effective 15 March 1997, wherein all pages of the Tariff are submitted as original pages from: the Original Title Page to page 21 of the Tariff Document.

Complainants' assessment of the Tariff Document follows with comments of improprieties and misleading information and/or proposed changes that will affect long distance service and operator assisted service in the Commonwealth of Kentucky:

Original Title Page - Complainant alleges that the Title Page is a misnomer, in that the proposed Highland Communication Corporation was in fact the Highland Communications Corporation of Tennessee and that there were no subscribers for service on 14 February 1997. Results of the equal access ballot election had not become known as of the afore-mentioned date.

Original Check Sheet

and Original Page No.1: The complainant advises the Executive Secretary of the Public Service Commission of the Commonwealth of Kentucky that these pages outline a Table of Contents of the proposed Tariff No.1, however, only as a guide of the subject matter there-in, upon which this

complainant desires to comment regarding the services proposed by Highland Communication Corporation, now, actually as Highland Communications of Tennessee, but still referred to as Highland Communications.

Original Page No. 2: Highland Communications Corporation reports, Concurring Carriers: "none." This complainant agrees. However, under, Connecting Carriers, "none", and Other Participating Carriers: "none," it is pointed out that in order to provide long distance service for its' proposed subscribers, it will be necessary to deal with both Connecting Carriers and other Participating Carriers. Highland Communications does not own lines and or equipment nationwide or to other countries, and as this complainant sees it, will be forced to deal with connecting and other participating carriers on a contract basis. Therefore, the statements made are simply not true and/or misleading, if such contracts are to be made at some future date. Their only reason for existence is to furnish service to subscribers through other carriers.

Original Page No. 3: Explanation of Symbols. No where in the Tariff are these symbols used.

Original Page No. 4: Item 2, (B): (1) & (2): This Complainant believes that telephone numbers 800/888 service can be dialed and/or assigned and that provisions for the use of these numbers must be a part of the business of any long distance company, if that service is required by their customers.

Original Page No. 5: Complainant makes no comment.

Original Page No. 6: Item 3. (B), (3)(a): Complainant states that this section does not agree with Item 10 on Original Page 20, which states that such services apply to all operator assisted calls, and where other carriers are involved, which is necessary, Highland Communications simply will not have information as to what other carriers will charge.

As for Item 3, (B), (4), & (5): Concerning aggregators, and the multiplicity of different carrier providers, this becomes a task beyond the capability of a new provider such as Highland Communications of Tennessee in competition with all others.

Regarding item 3, (B), (6) & (7): The complainant asks, How can Highland bill or not bill for calls over which they have no control. These sections appear to be unnecessary and should be deleted.

Original Page No. 7: Item 3.(C), (1)(a), (b), (c): Regarding responsibilities of subscribers it has already

been stated that this is the responsibility of the company on Page No.6. How can it be the responsibility of both subscribers and the company? Review of these sections should determine who is responsible.

Original Page No. 8: Regarding Item 3, (C),(3): Complainant states that the subscriber has no way of knowing the charges made to the subscriber.

Original Page No. 9: Item 4, (C): The complainant believes that a broad statement regarding liability to the company based on the proportionate charge to the company is not realistic. As an example, if a company representative should damage or destroy property resulting from their negligence, then the proportionate charge that might have been assessed the customer would not cover his loss. This section needs to be redone, as a corporation has the same responsibility to indemnify for losses as an individual.

Original Page 10: Item 6, (B): As this is now a company "for profit", the company should pay taxes the same as any individual company, person or corporation.

Item 6, (C): Regarding payment in advance, a statement of services should not be followed in four days by a threat to disconnect one's phone within a few days if not paid within that period of a few days as is being done now by Highland Telephone Cooperative, Inc. Also, this complainant believes that the same billing policies should apply to all: Governmental, residential and businesses.

Item 6, (D): Regarding direct billing - Highland will not be billing for other carriers, and based on payment arrangement as set forth in this tariff, why should they negotiate to provide direct billing. Can they or can they not bill as they do all their other subscribers?

Original Page 11: Item 6, (F): The statement, "The company does not require deposits or advance payments is simply not true as subscribers are paying current bills within 30 days of billing and it is my understanding where delinquent customers are reinstated, a deposit is required. Change or take out this section.

Original Page 12: Item 6, (G): The complainant states that this section is not in harmony with other sections. "The customer will be given 10 days written notice to comply". However, it should be pointed out in the regulations that this 10 days is on top of the 30 day rule previously stated. Item 6, (G),(6), again, this is contradictory to the 30 day rule where the subscriber pays in advance. This should be

reviewed or deleted.

Original Page 13: Item 6, (G),(10): Complainant believes section 10 is unnecessary. How can the company provide service without an application and isn't it the responsibility of the company to make sure the application is filed before service is commenced?

Original Page 14: Item 6, (I): Penalties. The complainant believes that possible penalties assessed by the company should be listed.

Original Page 15: No changes

Original Page 16: No Changes

Original Page 17: The complainant disagrees with the proposal as set forth for changes for direct dialed long distance calls:

Residence: Item 8, (A): Direct Distance Dialed Calls-
Business: Item 8, (B): These proposed usage rates exceed those of any other known provider of long distance service. The potential subscribers to service from Highland Communication have been receiving long distance service at \$0.15 per minute. The proposal set forth in this tariff exceeds that by \$0.13 a minute. This is unrealistic, and inflationary and it is recommended that the Public Service Commission refuse such a high rate. It will be stated by Highland Communications that subscribers had a choice, but the circumstances involving the way this choice was made involved misinformation, and an equal access ballot that placed Highland Communications at the top and advertisements that were not true, leading the subscribers to vote for Highland. This complainant was informed by Highland representatives that the rate would continue to be \$.15 per minute, as it has been with AT&T. For Highland Communications to immediately publish a new tariff with exorbitant increases should not be permitted.

Original Page 18: No Changes.

Original Page 19: Item 10: This section on operator assisted calls has already been referred to by Original Page 6.

Original Pg. 20: Item 10, (B): The Rate structure for operator assisted charges is much too high. Other companies rates in comparison are non-existent or greatly reduced. A new Rate Schedule should reflect reduced costs. Such blanket charges should be eliminated.

Item 11, Traveler's Card: (A) & (B). Again, these are too

high. \$0.28 a minute is no bargain and a surcharge of \$0.85 per call is unnecessary in this complainants opinion.

Original Page 21: Regarding 800/888 Service. The \$5.00 monthly subscription charge is too high and the usage charge of \$0.20 per minute exceeds the charge of \$0.15 per minute the regular charge for service by At&T. Charges should be brought in line with other providers of long distance service.

Item 13: (A), (1) & (2): This optional calling plan represents what potential subscribers were promised when balloting for equal access was taking place. Instead, we now find it at the end of the tariff with the comment that: for customers to get this plan it must be requested either by writing, in person or by phone. There is no detail about the time for such a request. Is it a one time request, good for all future calls or must it be for each individual call? If this optional calling plan stays in the tariff, then such instructions should be included in the tariff.

However, this complainant believes that the optional calling plan should be the basic schedule for all long distance calls, thereby, deleting the \$0.28, \$0.25, \$0.20 proposed. It is recommended that such a proposal be made by the Public Service Commission in order to safeguard the rights of Kentucky's citizens.

Original Page 22: Item 13: (B): This is a continuance of the Optional Calling Plan and the same as the Residence Plan, Item 13, (A), (1) & (2). This complainant believes that the rates are excessive. A reduction in rates from residence rates would help small business. Along the same line, Item 13, (C), (1), (2) & (3), the proposed rates of \$0.19 per minute after \$100.00 usage should be revised downward, below \$0.15 per minute for the same reason as reiterated above. We should do everything possible to entice small and large businesses into our community and charging \$0.19 per minute, or \$0.17, or even \$0.15 per minute are all excessive. The rates should be more like \$0.15 per minute, \$0.13 per minute and \$0.11 per minute respectively for the categories in Item 13 (C), (1), (2), and (3).

Other Pertinent Comments
Associated with this Formal Complaint

This complainant further alleges that the incorporation of Highland Communications of Tennessee using funding provided by Highland Telephone Cooperative, Inc., is a ploy to transfer the assets of the Cooperative to a for-profit company. Highland Telephone Cooperative, Inc., has 40 million dollars in assets, 18 million dollars in liabilities and 22 million dollars in surplus. The new company incorporated as Highland Communications of Tennessee has been chartered as authorized to issue one thousand (1,000) shares without par value. It is assumed by this complainant that the surplus monies of 22 million will be the funding for establishing Highland Communications of Tennessee. This money has been collected from the membership of Highland Telephone Cooperative, Inc. It is not known who would own the stock in Highland Communications of Tennessee, but we would have to assume that it will be Highland Telephone Cooperative. There are many possible scenarios and ramifications to this wheeling and dealing, but with the incorporation of a new company, Highland Telephone Communications of Tennessee is in the drivers seat, things could happen to Highland Telephone Cooperative, Inc., There certainly is no reason to continue to charge the membership the exorbitant rates assessed in the past. This has accumulated quite a large amount in capital credits for each telephone subscriber. What will happen to our capital credits with this change? We feel that the memberships capital credit certificates should at least be paid off before a change is made to Highland Communications of Tennessee, a profit making corporation where the stock holders will reap all the profits and possibly absorb our capital which is now due us. This money has been collected from the membership of Highland Cooperative, Inc. If this money is not returned to the membership, then our telephone bills should be reduced. This complainant believes that an investigation should be made by the Public Service Commission of the Commonwealth of Kentucky and remedial action taken to return the Highland Telephone Cooperative, Inc., to a true non profit status. The establishing of a new company for profit using non profit surplus violates the intent of the Cooperatives objectives. As the Public Services Commission already knows the new Highland Communications of Tennessee has contracted with Baker, Donelson, Bearman and Caldwell and two other lawyers to provide services to the organizations namely, Ernest A. Petroff and Paul T. Coleman. The way things are being done, it is hard to say what they have in mind, but an

investigation and a denial of this tariff, the complainant recommends, if justice is to prevail. There are too many unanswered questions, everything is being done to keep the subscribers from knowing the details. We do not know all the details and therefore, an investigation is needed.

Sincerely,

Robert E. Stephens
Robert E. Stephens
606 376 2042